Diese Website verwendet Cookies von Google, um Dienste anzubieten und den Traffic zu analysieren. Deine IP-Adresse und dein User-Agent werden zusammen mit Messwerten zur Leistung und Sicherheit für Google freigegeben. So können Nutzungsstatistiken generiert, Missbrauchsfälle erkannt und behoben und die Qualität des Dienstes gewährleistet werden.

WEITERE INFORMATIONEN OK

An unending variety of topics

Sunday, December 18, 2005

RIM asks Supreme Court to hear BlackBerry case

Research In Motion, Ltd. of Canada, which lost a very big (both in terms of dollars and legal precedent) case to NTP, Inc., over NTP's patent for a distributed e-mail system, has now asked the United States Supreme Court to hear the case.

The big legal issue is how to determine patent infringement when distributed systems (for example, Internet protocols) span borders.

Specifically, the issue under United States patent law is whether a system claim (or method claim) of a United States patent can be infringed when some features of the working system are located outside United States territory, but most the system elements or method steps are located within the United States, as are users. In this case a part of the system (and at least one of the steps of the method) corresponds to RIM's relay located in Canada; the other elements or steps (BlackBerries and the operations performed on them) and the users at issue are located within the United States. Another issue is whether RIM's infringement was direct or contributory infringement. A third issue is whether any international law is implicated.

If only some elements or steps need to be in a country to infringe a patent in that country, the operator of a patented protocol spanning two or more countries might be sued for infringing the same patent in two or more countries. There is a grave danger that the patent holder could recover far more damages than it would otherwise be entitled to. To avoid this, the international law principle of comity might have to be invoked to determine which country has jurisdiction. On the other hand, if all the elements or steps must be in a single country in order to infringe a patent, this leaves a loophole whereby makers of distributed systems can ignore patents as long as some of the features are located in different countries.

When the Federal Circuit, which has jurisdiction over patent appeals in U.S. patent infringement cases, first heard the case it said that the system claim was indeed directly infringed. It then reheard the case and decided that the method claim was *not* infringed. Their opinion was based on precedent from two older cases. The first case held that a system claim for a navigation system used in international waters was infringed because it was controlled from the United States. The second case held that a manufacturing process claim was not infringed if one of the steps was performed in Japan.

As a result of the dubious analogy of these two precedents (there are no binding cases more on-point) the Federal Circuit has somewhat illogically distinguished between a claim for a distributed algorithm and the same claim restyled as a distributed system. My own opinion is that, until a treaty is signed to say otherwise, all the elements and steps should have to be within the United States in order to infringe a United States patent. This leaves a loophole in patent law, but that's better than the injustices and international law issues that are raised by courts reaching across borders to find infringement in remote Internet servers. Furthermore, if what RIM

Pages

- Home

About Me

Nick Szabo

"A premier thinker about history, law and economics, and the lessons they have for security." -- Adam Shostack, Emergent Chaos

"Szabo comes out with these essays that leave me in awe." -- Brian Dunbar

"Reading material that is eclectic, challenging and endlessly fascinating." -- Sean McGrath, Propylon

"Like most blogs worth my attention, this blog is updated only infrequently. That is because the authors of blogs worth my attention only post when they have something to say that is true, relevant and not already known by their audience. Most of the human race does not have the skill to know when an idea has these three properties. The skill is particularly rare in the fields of politics and economics, which is why this blog is such a rare and valuable thing." -- Richard Hollerith

View my complete profile

did is considered infringement it should classified as contributory not direct infringement. RIM's customers may be "using" the patent "within the United States," but RIM itself is not. RIM would however be contributing to the infringement by providing the BlackBerries and running their e-mail relay and thus would still be liable. In other circumstances with no contributory infningement, however, it would be a grave injustice to find direct infringement in the United States because one was simply operating one element or step of the United States patent overseas.

The case before the Supreme Couret is now denoted Research In Motion, Ltd. v. NTP, Inc., Supreme Court No. 05-763, opinion below, NTP, Inc. v. Research In Motion, Ltd., 418 F.3d 1282 (Fed. Cir. 2005).

Read more information on this case here.

Posted by Nick Szabo at 7:56 AM

No comments:

Post a Comment

Newer Post Home Older Post

Subscribe to: Post Comments (Atom)

Blog Archive

- ► 2018 (1)
- ► 2017 (3)
- ► 2016 (4)
- ► 2015 (3)
- ► 2014 (3)
- ► 2013 (3)
- ► 2012 (8)
- ► 2011 (12)
- ► 2010 (9)
- ► 2009 (29)
- ► 2008 (55)
- ► 2007 (47)
- ► 2006 (130)
- ▼ 2005 (44)
  - ▼ December (16)
    - Robotic structures
    - Patents: the problem of gratuitous elements
    - LabCorp v. Metabolite briefs
    - The security and productivity of farms
    - A tamper evidence protocol from China
    - Secure property titles and development
    - The Justice Department vs. the United States Cons...
    - New Zealander challenges Amazon one-click patent
    - New book -- The Origins of Value
    - Copyright v. the blogosphere?
    - RIM asks Supreme Court to hear BlackBerry case
    - U.S. patent reform dead for this year
    - Another proposed amendment
    - What three constitutional amendments would you lik...

Relationship rights and the United States Supreme ...

The negative rights debate continues

► November (5)

► October (23)

Simple theme. Powered by Blogger.